IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1661 OF 1998

Razak Khan Akbar Khan ..Petitioner.

Vs.

Caste Scrutiny Committee & Ors. .. Respondents.

...

Mr. R.V. Pawar instructed by Mr. S.K. Gorwadkar for the Petitioner.
Mr. C.R. Sonawane, Assistant Government Pleader for Respondent Nos.1 to 4.

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CORAM: KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

17th April, 2006.

P.C. (Per **DR. D.Y. CHANDRACHUD, J.**) :

1. Rule, returnable forthwith. The Learned Assistant Government Pleader waives service on behalf of Respondent Nos.1 to 4. By consent taken up for hearing and final disposal.

2. The claim of the Petitioner to belong to the Julah community which has been recognized as being a part of the Other Backward Classes has been rejected by the impugned order dated 17th March, 1998 passed by the Caste Scrutiny Committee. It may be noted that the Petitioner had contested elections to the

Municipal Corporation of the city of Pune from Ward No.79 which was reserved for OBC candidates as an independent candidate and he was declared elected. In the affidavit in reply filed by the Research Officer attached to the Scrutiny committee, it has been stated that initially the Scrutiny Committee was constituted under a Government Resolution dated 14th March, 1985 and that in view of the power conferred upon the Scrutiny Committee in relation to claims of reserved category candidates in elections to self governing bodies under Government Resolutions dated 3rd June, 1996, 21st August, 1996 and 1st January, 1998, the case of the Petitioner was considered. It has been stated that in pursuance of the judgment of the Supreme Court in **Madhuri Patil v. Additional Commissioner, Tribal Development** (AIR 1995 SC 94), a new Scrutiny Committee came to be constituted under a Government Resolution dated 16th March, 1998. A copy of the said Government Resolution was received by the Caste Scrutiny Committee, Pune on 19th March, 1998 prior to the impugned order came to be passed on 17th March, 1998 by the old Scrutiny Committee which consisted of two members. Subsequently, under the Government Resolution dated 16th March, 1998 a new Scrutiny Committee consisting of three members as envisaged in the directions of the

Supreme Court has been constituted. The case of the Petitioner was heard on 9th February, 1998 by the old Scrutiny Committee and was decided before the new Government Resolution came into force under the directions of the Supreme Court. The new Scrutiny Committee has started functioning since then with three members and has a vigilance cell attached to it.

3. In these circumstances, we are of the view that the case of the Petitioner would merit a fresh consideration by the Scrutiny Committee. It is clear from the affidavit that the case had earlier been considered in terms of the earlier Government Resolution by a committee of two persons which no longer holds the field. In the circumstances, in order to facilitate a fresh determination, the impugned order of the First Respondent dated 17th March, 1998 is quashed and set aside. The Petitioner shall appear before the Scrutiny Committee on 2nd May, 1998 for receiving directions. It will be open to the Scrutiny Committee to have an enquiry conducted by the vigilance cell, after which a decision shall be arrived at in accordance with law within a period of six months upon furnishing an opportunity of being heard to the Petitioner. The impugned order is accordingly quashed and set aside and the

proceedings shall stand remitted back to the Scrutiny Committee duly constituted in accordance with law for a fresh decision.

CHIEF JUSTICE

(DR. D.Y. CHANDRACHUD, J.)